

Exhibit 12

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA, SOUTHERN DIVISION

ARMANDO VILLANUEVA and)	
HORTENCIA SAINZ, individually)	
and as successor in interest)	
to Pedro Villanueva, deceased,)	
and FRANCISCO OROZCO,)	
individually,)	
)	
Plaintiff,)	
)	
vs.)	CASE NO: 8:17-cv-
)	01302-JLS-KES
)	
STATE OF CALIFORNIA; et al.,)	
)	
Defendants.)	
_____)	

VIDEOTAPED DEPOSITION OF CLARENCE R. CHAPMAN

Taken on

Monday, August 6, 2018

Amber Pilson, CSR 13992

1 UNITED STATES DISTRICT COURT

2 CENTRAL DISTRICT OF CALIFORNIA, SOUTHERN DIVISION

3
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5 ARMANDO VILLANUEVA and)
HORTENCIA SAINZ, individually)
6 and as successor in interest)
to Pedro Villanueva, deceased,)
7 and FRANCISCO OROZCO,)
individually,)

8)
Plaintiff,)

9 vs.)

CASE NO: 8:17-cv-
01302-JLS-KES

10)
11 STATE OF CALIFORNIA; JOHN)
CLEVELAND; RICH HENDERSON; and)
12 DOES 1-10, inclusive,)

13 Defendants.)
14 -----)

15
16 VIDEOTAPED DEPOSITION OF CLARENCE R. CHAPMAN, taken
17 on behalf of Plaintiffs, at 21800 Burbank Boulevard,
18 Suite 310, Woodland Hills, California, commencing at
19 1:06 P.M. and terminating at 3:24 P.M., on Monday,
20 August 6, 2018, before Amber Pilson, Certified
21 Shorthand Reporter No. 13992 for the State of
22 California, pursuant to Notice.

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Also Present:

BEST EVIDENCE VIDEO
BY: Steven Zucker, Videographer

1 firearms" -- it's the second sentence --

2 A I see it. I see it. I have it.

3 Q Okay. Do you generally agree with that
4 sentence, "The use of firearms against moving motor
13:21 5 vehicles is inherently dangerous and almost always
6 ineffective"?

7 A Yes.

8 Q The next sentence says, "For the purposes
9 of this section, an assaultive moving vehicles shall
13:21 10 not presumptively justify a Department member's use
11 of deadly force."

12 Do you see that sentence?

13 A Yes, sir.

14 Q First of all, what is an "assaultive motor
13:21 15 vehicle"?

16 A Okay. And this is very important in
17 analyzing this particular policy. This policy
18 addresses moving motor vehicles, and so we're
19 talking mechanical objects. We're talking,
13:21 20 literally, 300,000 -- 3,000-pound vehicle, and a
21 bullet is not going to stop a 3,000-pound vehicle
22 under power, in other words, moving with any kind of
23 momentum.

24 The second sentence that comes down that
13:21 25 you reference is what is an assaultive motor

1 vehicle. An assaultive motor vehicle is a vehicle
2 moving in an officer's direction with the capability
3 of seriously harming the officer or killing the
4 officer, but it talks about a motor vehicle, and so,
13:22 5 having been a chief of police and -- and one -- and
6 a post instructor who constructs these kinds of
7 policies, we want to instill in the minds of the
8 officers that a motor vehicle is not a living
9 entity. You cannot hurt a motor vehicle with a
13:22 10 two-ounce bullet.

11 You're -- you're talking two -- I'm sorry,
12 "two ounces" -- I'm talking about two grams against
13 upwards of 5- -- 5,000 pounds for a truck, and --
14 and so that -- I think it forms a foundation for
13:22 15 instilling a proper application within the minds of
16 the officers to how to approach any use of force
17 regarding a motor vehicle.

18 Q Okay.

19 A I didn't mean to be so professorial, but I
13:23 20 used to teach this.

21 Q That's okay. I'm here to learn.

22 The next sentence says, "A Department
23 member threatened by an oncoming vehicle shall move
24 out of its path instead of discharging a firearm at
13:23 25 it or its occupants, allow the vehicle to pass, and

1 utilize other tactical or investigative means to
2 apprehend the suspect."

3 Did you understand that was part of the
4 sheriff's department policy in 2013?

13:23 5 A Yes. Yes, I understood that to be part of
6 the policy, and I absolutely support that, not only
7 with sheriff's department, with all police agencies.

8 Q Why -- do you think that's a good policy?

9 A I think it's a good policy, yes.

13:23 10 Q And why do you think that's a good policy?

11 A Well, let's go back to my previous
12 response: It's almost impossible, and I think it
13 says always -- "almost always ineffective" to stop
14 two tons with a couple of grams of lead, and so if
13:24 15 that is, in fact, the regard that -- that we're
16 going to take the scientific evidence in that
17 regard, it makes no sense for an officer to stand in
18 the path of a vehicle with nothing in defense but a
19 handgun. You're not going to stop that vehicle.

13:24 20 If you had a bazooka, maybe, or some kind
21 of a cannon on top of a tank, maybe so, but police
22 departments and officers don't carry that kind of
23 ammunition, and so the best option is to get out of
24 the way if, in fact, the vehicle passes to allow the
13:24 25 vehicle to pass if there is a sufficient

1 circumstances that would allow the officers to get
2 out of the way and just let the vehicle go.

3 Q Okay. So would you agree that if a officer
4 is threatened by an oncoming motor vehicle and the
13:25 5 officer can move out of its path instead of
6 discharging the firearm, they should do that?

7 A Yes.

8 Q Okay. Is that consistent, generally, with
9 general police training?

13:25 10 A Yeah, contemporary police training across
11 the country. I'm a member of the Association of
12 Chiefs of Police, and I still go to their
13 conferences, and that's still, pretty much, the
14 standard of care for defending -- officers defending
13:25 15 themselves against moving vehicles.

16 Q Okay. And when it says "Allow the vehicle
17 to pass and utilize other tactical or other
18 investigative means to apprehend the suspect," what
19 might some of those means be?

13:25 20 A Tactical would be communications, so
21 whenever an officer is on the radio communicating
22 with other units, police units, aerial units,
23 outside agencies, that's a tactical procedure in
24 that regard. Tactics could also be once that
13:26 25 individual vehicle who has fled is -- is -- is

1 located, then there can be area containments. There
2 can be tire strips that can be thrown out to disable
3 the car.

4 Those are all part of tactics, but
13:26 5 investigative means is something a little bit
6 different, and it departs from tactical in the -- in
7 the context that police agencies have the capability
8 to access certain databases, and so what the
9 officers knew at the time, the description of the
13:26 10 car, if they had a license plate number of the car,
11 if they had any indication through that license
12 plate number of the registered owner of the car and
13 the registered owner has any information through the
14 Department of Motor Vehicle database that could
13:26 15 identify a licensed driver, those are the
16 investigative measures that can be undertaken to
17 apprehend a suspect which is obviously the goal in
18 all this.

19 Q Okay. Now, in terms of some of the post
13:27 20 standards with regards to the use of deadly force,
21 and some of this, I know we've talked about before.
22 The post learning domains that were in effect at the
23 time of this shooting and the Chapter 3, I think,
24 you designated, talk about deadly force as being a
13:27 25 last resort; is that correct?

1 A Always.

2 Q And you agree with that?

3 A Yes.

4 Q And it also talks about deadly force only
13:27 5 being used in the direst of circumstances?

6 A I agree with that.

7 Q Okay. And that's not only part of post
8 standards, that's part of police officer training;
9 is that fair?

13:27 10 A Yes.

11 Q And it also talks about the reverence for
12 human life which we've briefly spoke about already?

13 A Correct.

14 Q And also the post standards with respect to
13:27 15 the use of deadly force also talk about not using
16 deadly force if other reasonable measures are
17 available, and you generally agree with that?

18 A Alternatives, yes.

19 Q And one of the alternatives, I think, we
13:28 20 talked about in the context of a moving vehicle is
21 is to step out of the path if you can?

22 A That's probably the best alternative.

23 Q The post talks about giving a warning that
24 you're going to use deadly force when feasible?

13:28 25 A When feasible, yes. Yes. If that warning

1 can be perceived and understood by the individual,
2 and there's enough time for the individual to comply
3 with that warning.

4 Q An officer should, in part, consider the
13:28 5 background when firing?

6 A It's called backdrop, yes. Backdrop
7 considerations and collateral damage is always
8 tantamount in any decision to use firearms as a
9 defensive method of force.

13:29 10 Q The Post Learning Domain 20 talks about
11 subject fear alone being insufficient to use force
12 including deadly force?

13 A Yes. Subjective fear is basically that
14 fear of the officer has no foundation in any
13:29 15 objective condition that may occur at the time. In
16 other words, just an individual being afraid of
17 something is not justification to use deadly force.

18 Q Now, have you reviewed or seen cases
19 before, whether you've been retained or you've seen
13:29 20 a video on television or whatever it might be, where
21 you thought that the officers overreacted by using
22 deadly force?

23 A Oh, yes.

24 Q Okay. And when an officer overreacts in
13:29 25 using deadly force would that be a, at least in your

1 mind, a case of excessive force? In other words,
2 you don't need some criminal intent to find
3 excessive force. You just need an officer
4 intentionally pressing the trigger and overreacting,
13:30 5 for example?

6 A Yes. I mean, there's a classic video out
7 on the media right now, Detroit police officers, and
8 I think there are four -- two officers I know were
9 fired, but go online, and they are firing at a motor
13:30 10 vehicle, but they fired, literally, 16 rounds at the
11 vehicle as it passed by them and it's leaving. It's
12 down an alleyway, and I think that's representative
13 of excessive, unnecessary, and unjustified force.

14 Q Okay. You saw that video online or on TV
13:30 15 or --

16 A It just occurred in the last 30 days.

17 Q Okay. And in your opinion, that would be
18 a -- a case of excessive force?

19 A Yes. In the next class I teach, I'm going
13:30 20 to use that -- that video to show what firing at
21 motor vehicles -- what would constitute an
22 unjustified use of force against a motor vehicle.

23 Q Generally speaking, under -- as you
24 understand the facts of the Detroit case, can
13:31 25 officers just shoot at the driver of a vehicle for

1 fleeing?

2 A No. I think that's what I'm talking about.

3 I think there's not only policy, but there's --

4 there's some case law against shooting at motor

13:31 5 vehicles that are fleeing. I know the California

6 Highway Patrol actually has a policy that thou will

7 not shoot vehicles fleeing on a freeway --

8 Q Right.

9 A -- for purposes of apprehension.

13:31 10 Q And you, as part of the materials you

11 reviewed in this case, you reviewed the depositions

12 of the involved officers?

13 A Yes. Sergeant Cleveland and

14 Officer Henderson.

13:31 15 Q Right. And did you note in -- in their

16 testimony that either one or both of them indicated

17 that, based on their training, you couldn't shoot

18 this vehicle simply for fleeing under the facts of

19 this case?

13:31 20 A And I think they both testified under oath

21 if Mr. -- if the driver had driven around them, they

22 would have let him go.

23 Q Okay. Do you agree with that, generally,

24 that under the facts of this case, you cannot use

13:32 25 deadly force by shooting the driver just for

1 fleeing?

2 A Not only do I agree, I think they were
3 well-trained officers to understand that policy or
4 the aspect of that policy.

13:32 5 Q Okay. Are -- are officers generally taught
6 to assess during a shooting sequence when they can,
7 and what I mean by that is I know sometimes it may
8 be difficult to assess with every shot, obviously,
9 but I know back in the day there was some training
13:32 10 with the County either to take two or three shots
11 and assess.

12 Do you recall that general training?

13 A Well, that is training. That's not
14 real-life scenario, and it has nothing to do with
13:33 15 policy and defensive force in the face of a deadly
16 threat, but that is training. That is training.

17 Q Okay. What --

18 A It's a training scenario, and it's actually
19 written up, and it's called a "failure drill" where
13:33 20 you can either take two shots to the body, one to
21 the head, you reassess; two shots to the head, one
22 to the body, you reassess. It's a training drill.
23 It's not a prescription for how officers are to
24 perform in the field, and I think that's a very
13:33 25 important distinction.

1 A I believe it was in 2001/2002.

2 Q Okay. So in terms of the concept -- we've
3 talked about this before too -- the acronym IDL,
4 Immediate Defense of Life?

13:36 5 A Yes.

6 Q So in terms of a moving vehicle, I guess,
7 the immediate or imminent threat of death or serious
8 bodily injury would, in that context, would be the
9 vehicle striking or -- or hitting the officer; is
10 that --

11 A That's a fair statement.

12 Q Okay. So in order for there to be, based
13 on the police training and standards, a
14 justification to use deadly force against the driver
13:36 15 of a vehicle, you would need the immediate or
16 imminent threat of death or serious bodily injury,
17 and you would need a scenario where the officer
18 cannot get out of the path of the vehicle?

19 In other words, you would need the
13:37 20 imminency of the threat, and if you can look back to
21 Exhibit 1 for a second -- do you still have that?

22 A Yes, I do.

23 Q So I'm looking about two thirds of the way
24 down. It says "A Department member shall not
13:37 25 discharge a firearm at a motor vehicle or its

1 occupants in response to a threat posed solely by
2 the vehicle unless the member has an objectively
3 reasonable belief that" -- and then it has two
4 bullet points: The first one, "The vehicle or
13:37 5 suspect poses an immediate threat of death or
6 serious physical injury to the Department member or
7 another person," and then it has an "and"
8 underlined, "the Department member has no reasonable
9 alternative course of action to prevent the death or
13:37 10 serious physical injury."

11 Is that your general understanding of the
12 training with respect to shooting at a moving
13 vehicle?

14 A Yes, sir.

13:38 15 Q Okay. So you would need the immediate
16 threat of death or serious bodily injury and no
17 reasonable alternative course of action such as
18 stepping out of the path?

19 A Very fair statement, yes.

13:38 20 Q Okay. And is it your understanding that
21 the -- the CHP policy is generally consistent with
22 the principles we've been talking about with respect
23 to the use of deadly force and shooting at moving
24 vehicles?

13:38 25 A Absolutely.

1 Q Okay.

2 A -- and he said he didn't know.

3 Q Okay. But in any event, your understanding
4 from reading Sergeant Cleveland's deposition that
13:47 5 the idea was to follow the vehicle, report as to its
6 location, wait for backup units to arrive, and then
7 try to effectuate a stop on the vehicle once the
8 backup units were there?

9 A Correct.

13:47 10 Q Okay. And did you think, generally
11 speaking, that was a good plan?

12 A It was an excellent plan.

13 Q Okay. And is the vehicle that the officers
14 were driving, was that a marked unit like we see in
13:48 15 normal patrol units or something a little bit
16 different?

17 A It was something a little bit different.
18 It was a dark-colored Ford Taurus. It didn't have
19 an -- what they call "outside" or "overhead" light
13:48 20 bar on it, and obviously, there were no insignias on
21 the side of the car. It just basically had light
22 bars inside on the front deck and on the rear deck,
23 forward facing red/blue lights, and in the rear
24 deck, amber lights.

13:48 25 Q Okay. Now, based on your review of the

1 materials, before the vehicle got to the general
2 location when -- where the shooting happened which
3 we'll talk about in a moment, did you think it would
4 have been appropriate to -- for the officers to fire
13:48 5 shots at the vehicle just as it was -- was moving
6 away from them going down these various streets?

7 A No, it wasn't appropriate. I think we
8 discussed there is a policy in CHP under Manual
9 Section 70.6 that specifically states thou shalt not
13:49 10 shoot at fleeing vehicles.

11 Q Okay. Did the officers, based on your
12 review of the materials, have any information that
13 the occupant or occupants of the vehicle had a gun
14 or -- or other weapon?

13:49 15 A There was no information to that in that
16 regard, no.

17 Q Any information that they had committed a
18 serious crime involving injury to anybody?

19 A An attempted injury, but no completed
13:49 20 injury.

21 Q Okay. You're talking about when they
22 reversed in the parking lot where Sergeant Cleveland
23 was making a U turn?

24 A As they were attempting to leave, yes.

13:49 25 Q Was there any contact between the vehicles

1 Q Okay. Do you have an understanding,
2 independent of what he thought, what the distance
3 was from the driver's side of his vehicle to the
4 west curb?

14:14 5 A Yes, because when I went there, I parked my
6 car in proximity of where his car was by looking at
7 the photographs, and I kind of marked it off, and it
8 looked like it was about 10 feet, 10/12 feet,
9 depending on, you know, what I could tell at the
14:15 10 time. I didn't have a Ford Taurus.

11 Q Did you -- in your report, did you include
12 any of the measurements?

13 A Oh, no. No. No. That's outside of my
14 realm of expertise. I left that to the --

15 Q Okay.

16 A -- engineering guys.

17 Q Okay. So based on your review of the
18 materials, was there enough room between the
19 driver's side of Sergeant Cleveland's vehicle and
14:15 20 the west curb for the truck to pass through?

21 A Yes.

22 You're asking me?

23 Q Yes, I am.

24 A My estimation is you can get an 18-wheel
14:15 25 Mack truck down that street without hitting the CHP

1 car.

2 Q Okay. When you say an 18-wheel Mack truck
3 down the street, just to make sure we're on the same
4 page, are you talking about in the space between the
14:16 5 driver's side of Sergeant Cleveland's car on the
6 west curb?

7 A Yes.

8 Q Okay. And do you think it was appropriate
9 for Sergeant Cleveland to position his vehicle in a
14:16 10 place where there was enough room for the truck to
11 continue to flee if that's what it chose to do?

12 A Oh, yes. I mean, you could see -- you
13 asked me earlier what was the direction or the
14 attitude of the CHP car. He actually positioned his
14:16 15 car to the northeast, and he's closer to the east
16 curb which would allow traffic to go by him as
17 opposed to sitting in the middle of the street.

18 Q Okay. So would you, at least, agree that
19 two tactical decisions that Sergeant Cleveland had
14:16 20 to make was, one, where to position his car and,
21 two, to get out of his car?

22 A I think that, Counsel, I think that is so
23 critical because I would be critical of those
24 officers if they put their car in a position in the
14:17 25 middle of that street that forced them into a

1 on the truck from whatever the distance was, 15 to
2 25 feet on the passenger side of the truck, do you
3 have any opinion as to whether that light could have
4 potentially illuminated someone sitting in the front
14:22 5 passenger seat?

6 A I have no way of knowing.

7 Q Okay. But, at least, at that point, would
8 you agree, as the truck backed up, the passenger
9 side would be closer to Sergeant Cleveland than the
14:22 10 driver's side?

11 A Yes.

12 Q Okay. And I think he indicated that he was
13 looking at the passenger side of the truck when it
14 reversed?

14:22 15 A Yes.

16 Q And you would agree, I take it, that it
17 would not be appropriate to shoot at the truck as it
18 was reversing?

19 A Correct.

14:22 20 Q And would it be a fair assumption on behalf
21 of an officer that, when they saw the vehicle
22 reversing, that there was a likelihood that the
23 driver was going to try to flee or get away at that
24 point?

14:23 25 A That's not a fair assessment. That's an

1 in order to get into that space; is that -- between
2 the driver's side of Sergeant Cleveland's vehicle
3 and the west curb?

4 A Correct.

14:28 5 Q And you believe that space, at least from
6 going to the scene, you're -- even though you're not
7 an expert in the measurements, it's something more
8 like 10 or 12 feet?

9 A Yeah. It may have been 15. I don't
10 know --

11 Q Okay.

12 A -- I didn't have a tape measure.

13 Q Okay. And would you agree that officers
14 are trained that if a vehicle appears to be
14:28 15 potentially moving in your -- in their direction,
16 then they should do whatever they can to get out of
17 the way?

18 A If they can, absolutely.

19 Q And, in fact, do you recall
14:28 20 Sergeant Cleveland saying that he felt the quickest
21 way for him to get out of the way of the vehicle was
22 to go to the west curb?

23 A Yes.

24 Q And, in fact, he said he was able to get
14:29 25 there within a couple seconds?

1 A Yes.

2 Q Okay. Because -- do you remember I asked
3 him, you know, "Did you consider going to the rear
4 of your vehicle or to another spot," and you recall
14:29 5 that discussion?

6 A I think that was a great question by you.

7 Q Oh, well, I finally asked one.

8 A You ask many of them -- most of them are
9 great questions.

14:29 10 Q Why did you think that was a good question?

11 A Because for Sergeant Cleveland to go to the
12 east curb, he would literally have to turn his back
13 or either run backwards in the dark of night on
14 pavement he was not accustomed to to get around the
14:29 15 trunk of that Ford Taurus to get over to the other
16 side. Both of those options are undesirable.

17 Police officers are not to turn their back
18 and try to run away. You're not going to -- you're
19 not going to outrun a car, and No. 2, in a
14:29 20 potentially deadly threat situation or a threat
21 situation, officers are not to run backwards in the
22 dark over pavement that they're not familiar with.
23 Those are the two things, and I think
24 Sergeant Cleveland brought those up. Those are the
14:30 25 two things that he did not want to do, so when you

1 directions correct?

2 A I finally got it back.

3 Q Okay. And so Sergeant Cleveland is
4 standing slightly outside the open driver's door.

14:45 5 The truck is reversing, and when the truck is
6 reversing, it would be going west; is that correct?

7 A The rear end of the truck would be going
8 west, correct.

9 Q Okay. And based, at least, on
14:45 10 Sergeant Cleveland's deposition testimony that he
11 thought, as an option, that when he saw it reversing
12 that the truck was maybe going to continue to flee
13 or try to get away?

14 A Correct.

14:46 15 Q Which you thought was a reasonable option
16 to consider?

17 A Absolutely.

18 Q And if the truck was to leave, and we
19 talked about this already, I believe, there was
14:46 20 space between the driver's side of
21 Sergeant Cleveland's vehicle and the west curb?

22 A Yes.

23 Q And, obviously, if an officer thought the
24 truck was going to leave in that space, an officer
14:46 25 wouldn't want to stand in that space; is that fair?

1 A Correct.

2 Q Okay. So if, hypothetically,

3 Sergeant Cleveland, when he saw the vehicle

4 reversing and thought that an option was the vehicle

14:46 5 was going it pull forward through this space that he

6 was standing in, and if Sergeant Cleveland, at that

7 time while the vehicle was reversing, decided to get

8 out of the area of that space and go to the west

9 curb, would you have been critical of that?

14:46 10 A No. I mean, that would have been an option

11 for the sergeant to do, yes.

12 Q Okay. And assuming, hypothetically, that

13 Sergeant Cleveland got to the west curb before the

14 vehicle ever starting pulling forward, at least, in

14:47 15 my hypothetical, would you, at least, then, agree

16 that it would have been inappropriate for

17 Sergeant Cleveland to shoot at the vehicle?

18 A Absolutely, because based on what you've

19 just established, if Sergeant Cleveland had gotten

14:47 20 to the west curb and Mr. Villanueva had turned that

21 truck around and proceeded at one to two miles an

22 hour southbound down Pritchard, the officers would

23 stay -- stand there and watch him leave.

24 Q Okay. And that's what they should do based

14:47 25 on their training?

1 side?

2 A It wouldn't be front. It would be side.

3 Q Side. Yeah, you're right --

4 A Yeah, of the front seat. The side window
14:48 5 to the front seat.

6 Q Correct. Okay. So would you at least
7 agree that when Sergeant Cleveland fired those
8 shots, he would have been on the passenger's side of
9 the vehicle when he fired?

14:49 10 A Yes.

11 Q Okay. And in your mind, do you think being
12 on the passenger's side of the vehicle when he fired
13 would be consistent with him being on the west curb?

14 A Not on the west curb, no.

14:49 15 Q Why not?

16 A He would be going towards the west curb.

17 Q Why would it be inconsistent with him being
18 on the west curb is what I'm saying, and maybe it's
19 beyond your area of expertise in terms of the
14:49 20 trajectory.

21 A Yeah, I mean, it's -- it wouldn't be
22 inconsistent, but it wouldn't necessarily be
23 consistent because, as we stated before, no one
24 knows exactly where Sergeant Cleveland was. No one
14:49 25 knows exactly where that truck was, and no one knows

1 exactly the position of the truck and
2 Sergeant Cleveland when he fired those rounds. I
3 can't tell you that he was on the west curb. I can
4 tell you that he was moving towards the west curb
14:49 5 and that the -- Mr. Villanueva's truck was actually
6 moving southeast.

7 Q Away from the west curb?

8 A Away from the west curb.

9 Q Towards the -- towards the --
14:50 10 Sergeant Cleveland's vehicle?

11 A Yes.

12 Q It ended up rolling into the vehicle?

13 A Well, rolling --

14 Q Striking the vehicle?

14:50 15 A -- or striking -- yeah, there you go.
16 Striking the vehicle.

17 Q There's some dispute as to the speed; is
18 that fair?

19 A And the condition of Mr. Villanueva as
14:50 20 opposed to whether he coasted into the vehicle or he
21 intentionally struck the vehicle.

22 Q Let me ask you this: Is -- is part of the
23 training with respect to shooting the driver of a
24 moving vehicle that striking the driver or shooting
14:50 25 at the driver of a moving vehicle could potentially

1 disable the driver?

2 A Well, I think a bullet impact would disable
3 anybody whether you're driving or not, so yes, that
4 would -- it would follow that if you get shot,
14:50 5 you're going to more than likely be incapacitated to
6 some degree.

7 Q And are officers trained that that could
8 potentially put either officers or the public in
9 danger if you have a disabled driver driving?

14:51 10 A Well, they're not trained that way. It is
11 a cautionary inclusion into every police policy
12 because it is a reality. Anyone being shot is going
13 to have less ability to control their physical
14 movements in what they want to do, but what's --
14:51 15 what's important, to consider that, we cannot place
16 the concept of a person who is driving a vehicle is
17 going to be incapacitated to the point where that
18 vehicle becomes dangerous to the officers or the
19 general public. What officers are trained under
14:51 20 deadly force policy is whether the movements of the
21 weapon or the assaulting vehicle are intentional or
22 accidental.

23 If the driver has been incapacitated by a
24 bullet shot, anything that happens past that
14:52 25 incapacitation is accidental and unintentional.

1 What we're talking about is the perception of the
2 officers on an intentional act. So what's more
3 important? I want, as an officer, to stop an
4 intentional assault as opposed to something that may
14:52 5 be unintentional and not under force and power.

6 Q Okay.

7 A That is very important to consider as to
8 the damage that vehicle is going to do because the
9 vehicle is not being steered. It's not being
14:52 10 controlled. It's not being navigated. It's
11 actually got a person there who's incapable, and so
12 at some point in time, it's got to stop. If the
13 person is intentionally operating the vehicle, it's
14 not going to stop. It's going to keep going.

14:52 15 Q Right. But in this case, is it your
16 understanding, according to the testimony of the
17 officers, that all the shots occurred before the
18 vehicle made impact with Sergeant Cleveland's
19 vehicle?

14:53 20 A According to the officers, yes.

21 Q Okay. And is it your understanding --
22 clearly, in order for the vehicle to go through that
23 path, it ended up in a position somewhat different
24 than going through that -- that space between the
14:53 25 driver's side of Sergeant Cleveland's vehicle and

1 the curb?

2 A That is correct.

3 Q And one thing I'm sure you considered is
4 that the car may have ended up going in that
14:53 5 direction because, at some point, the driver was
6 disabled from the shots?

7 A It could have been at some point, but I
8 don't know at what point in the trajectory of that
9 truck was Mr. Villanueva incapacitated that he was
14:53 10 no longer putting that truck under power towards the
11 officers.

12 Q Okay. Do you recall anything in reviewing
13 Mr. Orozco's testimony as to whether or not any of
14 the initial shots had struck Mr. Villanueva?

14:54 15 A Mr. Oruzco -- Orozco -- there's two:
16 There's Abel Orozco, and there's Francisco Orozco --

17 Q I wanted --

18 A -- both of them are witnesses so --

19 Q I wanted to refer to the one who was in the
14:54 20 vehicle.

21 A That would be Francisco. Francisco is
22 interesting because he gives three accounts of the
23 incident, but if you're talking about his
24 deposition?

14:54 25 Q Yes. So here's my question, and I didn't

1 want to go through a whole litany of your thoughts
2 on his credibility. Generally, experts aren't
3 allowed to do that, but I understand. I wanted to
4 limit it to the question, "Did Mr. Orozco, based on
14:54 5 your review of -- whether it's his deposition/his
6 statement -- have an impression as to whether or not
7 some of the initial shots struck Mr. Villanueva?"

8 A Yes.

9 Q Okay. And do you recall "Sergeant"
14:55 10 Henderson saying that he believes he started
11 shooting before he heard any shots from
12 Sergeant Cleveland?

13 A Well, Officer Henderson did say that, yes.

14 Q And do you recall Sergeant Cleveland saying
14:55 15 that he heard shots before he fired -- ever fired
16 any shots?

17 A Yes, but I don't think they're very sure of
18 exactly that happening, but that's what they said.

19 Q Okay. And so one scenario could be that
14:55 20 after the vehicle backed up and impacted the Honda
21 and it was intending to -- to move forward and turn
22 into the space between the driver's side of
23 Sergeant Cleveland's vehicle and the west curb, one
24 or more shots struck Mr. Villanueva, and he was
14:56 25 unable to get the car into that space, and the car

1 ended up kind of moving into the parked vehicle; is
2 that fair?

3 A No. I think -- I mean, you cautioned me
4 that experts cannot opine on veracity, and that's
14:56 5 true. I think that there's no coroner in the world
6 that's going to tell you the -- the progression of
7 shots. Most coroners can't tell you which shot hit
8 first, which shot hit second.

9 Now, there's certain things that we can
14:56 10 assume based on the position of the officers, but
11 the sequence of shots and the sequence of shots that
12 hit Mr. Villanueva, looking at all this, I don't see
13 anything that addresses which round hit him first.

14 Q No. I agree with you there. I wasn't
14:56 15 trying to say if it was a particular round. I was
16 just trying to say if it was any round that struck
17 him.

18 Let me ask it in a different way.

19 A Okay.

14:57 20 Q You -- you indicated, based on your review
21 of the materials, that Sergeant Cleveland was
22 running to the west curb?

23 A Yes.

24 Q Okay. And you indicated that the vehicle,
14:57 25 the truck as it was approaching Sergeant Cleveland's

1 vehicle, was moving in a direction away from the
2 west curb?

3 A Correct.

4 Q So the front of the truck was moving in a
14:57 5 direction away from the west curb where
6 Sergeant Cleveland was running to; is that fair?

7 A That's a fair statement.

8 Q Okay. And I'm just wondering if you had an
9 impression as to why. In other words, did you have
14:57 10 an impression, from reviewing the materials, as to
11 why the truck ended up -- instead of going through
12 that space -- and ended up impacting the --
13 Sergeant Cleveland's vehicle?

14 A If you're asking me why, my response would
14:57 15 be because Mr. Villanueva was trying to kill
16 Sergeant Cleveland.

17 Q Well, the -- this is the part that I'm
18 having an issue with. This is why I ask: He's
19 actually driving a vehicle in a direction away from
14:58 20 Sergeant Cleveland. Sergeant Cleveland is running
21 to the west curb. The vehicle is not going towards
22 the west curb or tracking Sergeant Cleveland in any
23 way. In fact, it's going in the opposite direction;
24 correct?

14:58 25 A Correct.

1 Q Let me ask you this hypothetical: Let's
2 assume that Sergeant Cleveland had made it to the
3 west curb before the truck started moving forward.
4 This is my hypothetical --

14:58 5 A Hypothetical. Right.

6 Q Then would you agree the shots would have
7 been inappropriate and excessive under that
8 hypothetical?

9 A Under that hypothetical, if
14:58 10 Sergeant Cleveland was not in danger of his
11 well-being or his life, there'd be no justification
12 for any shots.

13 Q Okay. Because under that hypothetical,
14 Sergeant Cleveland was not in the path of the
14:59 15 vehicle when it started to move forward?

16 A He would be under no danger.

17 Q Okay. Let me give you another
18 hypothetical, and let's assume that
19 Sergeant Cleveland started moving or running to the
14:59 20 west curb just as the vehicle started to move
21 forward and was able to get to the west curb maybe
22 after the vehicle started moving just a few feet
23 forward.

24 Do you understand my hypothetical?

14:59 25 A Yes.

1 Q Then -- and then under that scenario, would
2 you say the shooting would be inappropriate?

3 A Not if -- no. Not if Sergeant Henderson --
4 Cleveland was not in danger, no.

14:59 5 Q It would not be appropriate?

6 A At no time would a shooting be appropriate
7 if the officers are out of the path of danger.

8 Q Okay. So -- and that gets into what we
9 spoke about before. You'd have to have that
15:00 10 immediate threat of death or serious bodily injury
11 and an inability to get out of the way?

12 A Yes.

13 Q Okay. Now, from Officer Henderson's
14 perspective.

15:00 15 A Okay.

16 Q You reviewed his deposition?

17 A Yes, I did.

18 Q And did Officer Henderson specifically
19 know, according to his deposition testimony, where
15:00 20 Sergeant Cleveland was during the time he was firing
21 these 12 shots?

22 A I believe he stated in two parts -- two
23 points in his deposition. He says that one time he
24 sees him out of his periphery vision to his left.
15:00 25 He assumes an isosceles shooting position -- I'll

1 Three/five seconds? Three or four seconds --
2 Sergeant Cleveland is not going anywhere. That's
3 why he -- that's why Officer Henderson testified, "I
4 generally knew where he was."

15:03 5 Q Well -- okay. You get the three to four
6 seconds just from the 12 shots?

7 A From the 12 shots, and I think --

8 Q Right. And so --

9 A Okay. Go ahead. I'm sorry.

15:03 10 Q Well, I'm sorry.

11 Did you finish your answer?

12 A Yeah, I'm done.

13 Q Okay. So assuming that's correct, and I
14 think Sergeant Cleveland said it just took him a
15:04 15 couple seconds to get to the west curb?

16 A Exactly.

17 Q Okay. And so if the 12 shots happened
18 from -- from Officer Henderson before the impact
19 between the truck and Sergeant Cleveland's vehicle;
15:04 20 right?

21 A Okay.

22 Q So the car was moving forward for at least
23 three to four seconds before the -- the impact. Is
24 that fair just putting those two --

15:04 25 A Yeah. I mean, in an estimate. I mean, I

1 would not want to get nailed to three to four

2 seconds. Nobody knows. I think at some --

3 Q Well, he had to get off --

4 A -- somebody said five seconds.

15:05 5 Q Right. But he had to get off 12 shots;
6 right?

7 A He had to get off 12 shots.

8 Q And, according to them, before the impact?

9 A According to them, before the impact, yes.

15:05 10 Q So, and then we talked about the distance
11 before, 15 to 25 feet?

12 A Yes.

13 Q And I take it you didn't do any
14 calculations as to how fast a car would have to be
15:05 15 moving to -- to move 15 or 18 feet in four or five
16 seconds?

17 A I didn't take those classes in college, no.

18 Q Okay. That was smart of you.

19 Did you have an understanding from
15:05 20 reviewing the materials whether the driver's side
21 door of Sergeant Cleveland's vehicle was open or not
22 at the time of the shooting?

23 A I assumed that it was. He got out of the
24 car. He doesn't have any recollection of whether
15:06 25 the door was closed or not, and I know you're

1 getting to the crime scene photographs, and I think
2 the door was closed, and -- and so I don't think the
3 question was ever answered as to who closed the
4 door. We know it was open at one time. He had to
15:06 5 get out of the car.

6 Q Right.

7 A And he testified he was standing a little
8 behind the V of the car, so we know it was open. At
9 some point in time, the door got closed.

15:06 10 Q I guess, what I'm wondering, do you know
11 from any evidence you reviewed whether or not the
12 truck ever impacted that door?

13 A I don't know.

14 Q And I think I've already covered this with
15:07 15 you with Officer Henderson, but I asked him, "Would
16 it be correct that you did not look to see where
17 your partner was during the shots," and he said,
18 "Yes."

19 A That's correct.

15:07 20 Q But that's your understanding. He did not
21 look to see --

22 A No.

23 Q -- where Sergeant Cleveland was during the
24 shots; is that correct?

15:07 25 A No, he did not look to his left. He

1 A My point exactly.

2 Q Okay. That's fair enough.

3 Was it -- did you have an understanding as
4 to whether Sergeant Cleveland issued any commands
15:08 5 after getting out of the car but before he fired?

6 A I'm really unsure on that. I know that
7 Officer Henderson issued commands, and there's some
8 witnesses that hear commands with a certain flavor
9 of profanity involved in that. I don't know if
15:09 10 Sergeant Cleveland said whether he did or not. I'm
11 not really sure. I think he doesn't really
12 remember, but he thinks he did.

13 Q How about Officer Henderson?

14 A Officer Henderson, I think he believes -- I
15:09 15 believe that he said that he issued commands, and
16 like I said, there are witnesses that hear commands
17 to -- to stop.

18 Q Any -- with terms of profanity, do you have
19 any professional opinion as to whether or not
15:09 20 officers should try to avoid using profanity when
21 they can?

22 A Officers should try to avoid using
23 profanity when the situation is static and contained
24 and stable. Officers should never disparage their
15:09 25 oath of office or their position by calling people

1 out of their name.

2 We were taught in the sheriff's department
3 that in volatile situations, sometimes that
4 communicates the intent of the officer more clearly
15:10 5 because it's street jargon, and so profanity is not
6 always prohibited. In deadly force situations, if
7 profanity can stop the use of deadly force or shots
8 being fired, I tell my officers, "Let it go if
9 that's what you think can communicate your intention
15:10 10 to get an individual to stop -- to cease assaultive
11 behavior."

12 So profanity played no part in this case in
13 my review. Being a sheriff's commander, a station
14 commander, and a chief of police, it played no part
15:10 15 in it.

16 Q If, hypothetically, Sergeant Cleveland,
17 before he fired, was out of the path of the car --
18 you're already saying he should not have fired; is
19 that correct?

15:10 20 A That's correct.

21 Q And do you have any opinion with respect
22 to -- assume hypothetically for purpose of the
23 hypothetical --

24 A Mm-hmm.

15:10 25 Q -- that Sergeant Cleveland was looking when

1 he fired into the passenger's side of the car and
2 saw someone sitting in the front passenger seat,
3 would that be a factor that you think an officer
4 should consider when deciding whether to fire
15:11 5 through that window at the driver?

6 A Absolutely. In that hypothetical, yes.

7 Q And why would that be?

8 A Because if the officer is standing to the
9 side of the car where he can see the passenger is
15:11 10 sitting in the passenger seat, that means the car is
11 beyond him. The car is not threatening him. That's
12 No. 1.

13 Number 2, why would he shoot the passenger?
14 The passenger is not controlling the vehicle. I
15:11 15 don't think there's any dispute with anyone that at
16 that particular point set up by the constructs of
17 your hypothetical that it would justify a shooting
18 by any officer.

19 Q So we talked about background. Would
15:12 20 sometimes the -- I don't know if I'm using the right
21 term -- the foreground have to be considered when
22 shooting?

23 A Sure. All your surroundings. You need --
24 the officer needs to be cognizant of everything
15:12 25 around him and everything that's involved, and like

1 There's kids everywhere all the time.

2 Q Right. I'm just wondering -- I mean,
3 sometimes, wouldn't it be difficult for officers to
4 know whether or not kids are in the line of fire?

15:13 5 A Not in that situation. If you're going to
6 be killed and I'm an officer and I'm about to be
7 killed by a truck and I don't see any kids and I
8 have reason to believe there's probably no kids out
9 on the runway of an airport -- whether they knew it
15:13 10 or not, it's actually a dark abyss out there at
11 night -- then there would be no requirement to
12 consider that even though there's kids on the
13 sidewalk. They're not in the line of fire.

14 Q Is that essentially the issue, so about to
15:14 15 be -- I guess it would be about to be killed or run
16 over by the truck and unable to get out of the way?

17 A There's no other reason/justification to
18 fire deadly force. We've gone over that with the
19 Post Training 20, and we've gone over that with the
15:14 20 CHP policy. If there is no threat to life, there is
21 no justification for shooting.

22 Q So would you agree that, generally
23 speaking, if you were talking about whether the
24 facts of this case or generally shooting at a moving
15:14 25 vehicle, if the officer was not in immediate danger

1 of being run over and/or the officer was able to get
2 out of the way, then the officer should not shoot?

3 A Yeah. And that's the ultimate question in
4 this case. That's for the trier of fact. That is
15:14 5 what this case is going to come down to.

6 MR. GALIPO: Okay. Is it okay if we take a
7 short break?

8 MS. DEAN: Sure.

9 THE VIDEOGRAPHER: Off record, 3:15.

15:16 10 (A recess was taken.)

11 THE VIDEOGRAPHER: Back on the record,
12 3:20.

13 BY MR. GALIPO:

14 Q You don't hold yourself out as a human
15:21 15 factors expert, do you?

16 A No. I've answered questions on humans --
17 human factors. Dennis Gonzalez has had me -- asked
18 me a few questions. I'm not a trained human factors
19 person, but I've had courses through William
15:21 20 Lewinski's institute on human factors, so I did -- I
21 have had training in it, but I'm not formally
22 educated.

23 Q Okay. Some of this we've already covered,
24 and I think your testimony is very consistent in
15:21 25 some respects with Sergeant Cleveland's deposition

1 testimony. You recall Sergeant Cleveland, in his
2 deposition, saying if you -- if you -- if a vehicle
3 is coming in your direction, you should get out of
4 the path?

15:21 5 A Yes.

6 Q And you agree with that?

7 A Oh, absolutely.

8 Q And if you can get out of the path, you
9 should not shoot?

15:22 10 A That's correct.

11 Q And you agree with that?

12 A Yes.

13 Q And he felt his easiest -- the easiest
14 direction for him to get out of the path was going
15:22 15 to the west curb line?

16 A Correct.

17 Q And you agree with that?

18 A Yes.

19 Q And he indicated, and I think you've said
15:22 20 similar today, if the vehicle is not about to strike
21 you, you should not shoot?

22 A That is correct.

23 Q And if you're able to get out of the way,
24 you should not shoot?

15:22 25 A That is correct.